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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA– EASTERN DIVISION

PATRICIA FILARDI, an individual,

Plaintiff,

v.

SA FOOD SERVICE LLC, a
California limited liability company;
MONGSON, LLC, a California
limited liability company; and DOES
1-10, inclusive,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, PATRICIA FILARDI (“Plaintiff”), complains of Defendants SA
FOOD SERVICE LLC, a California limited liability company; MONGSON, LLC, a
California limited liability company; and DOES 1-10 (“Defendants”) and alleges as
follows:

PARTIES:

1
2 1. Plaintiff PATRICIA FILARDI is an adult quadriplegic who uses a
3 wheelchair for mobility. She has a specially equipped van with a ramp that deploys
4 out of the passenger side of her van. Plaintiff is substantially limited in performing
5 one or more major life activities, including but not limited to: walking, standing,
6 sleeping, ambulating, and/or sitting. Plaintiff requires the use of a wheelchair at all
7 times for mobility and life functions. At the time of Plaintiff's visits to Defendant's
8 facility and prior to instituting this action, Plaintiff suffered from a "qualified
9 disability" under the ADA. She has a Disabled Person Parking Placard issued to her
10 on a permanent basis.

11 2. Plaintiff brings this action acting as a "private attorney general" as
12 permitted under the American with Disabilities Act of 1990 ("ADA") to privatize
13 enforcement of the ADA without the American tax payer(s) bearing the financial tax
14 burden for such action.

15 3. Defendant MONGSON, LLC, a California limited liability company,
16 owned the property located at 25251 Madison Avenue, Murrieta, California 92562
17 ("Property") on December 30, 2018.

18 4. Defendant MONGSON, LLC, a California limited liability company
19 owns the Property currently.

20 5. Defendant SA FOOD SERVICE LLC, a California limited liability
21 company, owned, operated and controlled the business of Arby's #7132,
22 ("Business") on December 30, 2018.

23 6. Defendant Owner SA FOOD SERVICE LLC, a California limited
24 liability company, owns, operates and controls the Business currently.

25 7. Plaintiff does not know the true names of Defendants, their business
26 capacities, their ownership connection to the Property and Business, or their relative
27 responsibilities in causing the access violations herein complained of, and alleges a
28 joint venture and common enterprise by all such Defendants. Plaintiff is informed

1 and believes that each of the Defendants herein, including Does 1 through 10,
2 inclusive, is responsible in some capacity for the events herein alleged, or is a
3 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
4 when the true names, capacities, connections, and responsibilities of the Defendants
5 and Does 1 through 10, inclusive, are ascertained.

6 **JURISDICTION AND VENUE**

7 8. This Court has subject matter jurisdiction over this action pursuant
8 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
9 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

10 9. This court has supplemental jurisdiction over Plaintiff's non-federal
11 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
12 related to Plaintiff's federal ADA claims in that they have the same nucleus of
13 operative facts and arising out of the same transactions, they form part of the same
14 case or controversy under Article III of the United States Constitution.

15 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
16 Property which is the subject of this action is located in this district and because
17 Plaintiff's causes of action arose in this district.

18 **FACTUAL ALLEGATIONS**

19 11. Plaintiff went to the Business on or about December 30, 2018, to
20 purchase lunch.

21 12. The Business, including the Property, is a facility open to the public, a
22 place of public accommodation, and a business establishment.

23 13. Parking spaces are some of the facilities, privileges and advantages
24 reserved by Defendants to persons patronizing the Business and Property.

25 14. Unfortunately, although parking spaces were some of the facilities
26 reserved for patrons, there were barriers for persons with disabilities that cause the
27 named facilities to fail as to compliance with the Americans with Disability Act
28 Accessibility Guidelines ("ADAAG") on or around December 30, 2018, or at any

1 time thereafter up to and including, the date of the filing of this complaint.

2 15. Instead of having architectural barrier free facilities for patrons with
3 disabilities, Plaintiff experienced the following at the Business and Property: the
4 curb ramp at the accessible parking space access aisle serving the main entrance
5 projects into the access aisle in violation of Section 406.5 which requires that curb
6 ramps and the flared sides of curb ramps shall be located so that they do not project
7 into vehicular traffic lanes, parking spaces, or parking access aisles; and, parking
8 spaces and access aisles serving them shall comply with 302. Access aisles shall be
9 at the same level as the parking spaces they serve. Changes in level are not
10 permitted.

11 16. Subject to the reservation of rights to assert further violations of law
12 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
13 violations which affects her personally.

14 17. Plaintiff is informed and believes and thereon alleges that, currently,
15 there are no compliant, accessible Business facilities designed, reserved and
16 available to persons with disabilities at the Business in addition to that alleged *supra*.

17 18. Plaintiff is informed and believes and thereon alleges that Defendants
18 had no policy or plan in place to make sure that the parking spaces were compliant
19 for persons with disabilities and remained compliant prior to December 30, 2018.

20 19. Plaintiff is informed and believes and thereon alleges Defendants have
21 no policy or plan in place to make sure that the complaints of violations alleged
22 above are available to persons with disabilities and remain compliant currently.

23 20. Plaintiff personally encountered the above alleged barriers when
24 attempting to access the Business and Property. These inaccessible conditions
25 denied the Plaintiff full and equal access and caused her difficulty, humiliation,
26 frustration and upset.

27 21. As an individual with a mobility disability is dependent upon a
28 wheelchair, Plaintiff has a keen interest in whether public accommodations have

1 architectural barriers that impede full accessibility to those accommodations by
2 individuals with mobility impairments.

3 22. Plaintiff is being deterred from patronizing the Business and its
4 accommodations on particular occasions, but intends to return to the Business for the
5 dual purpose of availing herself of the goods and services offered to the public and
6 to ensure that the Business ceases evading its responsibilities under federal and state
7 law.

8 23. As a result of her difficulty, humiliation, and frustration because of the
9 inaccessible condition of the facilities of the Business, Plaintiff did not fully access
10 the Business or Property. However, Plaintiff would like to return with her disabled
11 fiancé to the location given its close proximity to an area she frequents from time to
12 time.

13 24. The Defendants have failed to maintain in working and useable
14 conditions those features required to provide ready access to persons with
15 disabilities.

16 25. The violations identified above are easily removed without much
17 difficulty or expense. They are the types of barriers identified by the Department of
18 Justice as presumably readily achievable to remove and, in fact, these barriers are
19 readily achievable to remove. Moreover, there are numerous alternative
20 accommodations that could be made to provide a greater level of access if complete
21 removal were not achievable.

22 26. Plaintiff and her disabled fiancé are being deterred from patronizing the
23 Business and its accommodations on particular occasions, but intend to return to the
24 Business for the dual purpose of availing themselves of the goods and services
25 offered to the public and to ensure that the Business ceases evading their
26 responsibilities under federal and state law.

27 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
28 alleges, on information and belief, that there are other violations and barriers in the

1 site that relate to her disabilities. Plaintiff will amend the complaint, to provide
 2 proper notice regarding the scope of this lawsuit, once she conducts a site inspection.
 3 However, please be on notice that Plaintiff seeks to have all barriers related to their
 4 disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding
 5 that once a plaintiff encounters one barrier at a site, she can sue to have all barriers
 6 that relate to her disability removed regardless of whether she personally
 7 encountered them).

8 28. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 9 alleges, on information and belief, that the failure to remove these barriers was
 10 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
 11 defendants exercised control and dominion over the conditions at this location, and
 12 therefore, (3) the lack of accessible facilities was not an accident because had the
 13 defendants intended any other configuration, they had the means and ability to make
 14 the change.

15 29. Without injunctive relief, plaintiff will continue to be unable to fully
 16 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

19 **42 U.S.C. § 12181 et seq.**

20 30. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 21 above and each and every other paragraph in this Complaint necessary or helpful to
 22 state this cause of action as though fully set forth herein.

23 31. Under the ADA, it is an act of discrimination to fail to ensure that the
 24 privileges, advantages, accommodations, facilities, goods, and services of any place
 25 of public accommodation are offered on a full and equal basis by anyone who owns,
 26 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).
 27 Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D".
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

32. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991 Standards, parking spaces and access aisles must be level with surface slopes not exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps are not permitted to project into access aisles and parking spaces. *Id.* No more than a 1:48 slope is permitted. Standards § 502.4.

33. Here, the failure to ensure that accessible facilities were available and

1 ready to be used by Plaintiff is a violation of law.

2 34. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily accessible
4 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 35. Given its location and options, Plaintiff will continue to desire to
6 patronize the Business but she has been and will continue to be discriminated against
7 due to lack of accessible facilities and, therefore, seek injunctive relief to remove the
8 barriers.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL**

11 **CODE § 51 *et seq.***

12 36. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
13 above and each and every other paragraph in this Complaint necessary or helpful to
14 state this cause of action as though fully set forth herein.

15 37. California Civil Code § 51 *et seq.* guarantees equal access for people
16 with disabilities to the accommodations, advantages, facilities, privileges, and
17 services of all business establishments of any kind whatsoever. Defendants are
18 systematically violating the UCRA, Civil Code § 51 *et seq.*

19 38. Because Defendants violate Plaintiff's rights under the ADA, they also
20 violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f),
21 52(a).) These violations are ongoing.

22 39. Defendants' actions constitute intentional discrimination against
23 Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil
24 Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants
25 have been previously put on actual notice that its premises are inaccessible to
26 Plaintiff as above alleged. Despite this knowledge, Defendants maintain the
27 Property and Business in an inaccessible form.
28

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note: Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act at all.**

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for each time she visits an establishment that contains architectural barriers that deny the Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.* (2005) 431 F.Supp.2d 1088, 1091.)

3. An additional award of \$4,000.00 as deterrence damages for each violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016);

4. For reasonable attorneys' fees, litigation expenses, and costs of suit, pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this Complaint.

Dated: February 25, 2019

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.

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